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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in the Sudan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in the Sudan prepared by Mr. Gáspár Bíró, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/112 of 12 December 1996 and Economic and Social Council decision 1997/268 of 22 July 1997.

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ANNEX

Interim report on the situation of human rights in the Sudan prepared by the Special Rapporteur of the Commission on Human Rights in accordance with General Assembly resolution 51/112 and Economic and Social Council decision 1997/268

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I. INTRODUCTION

1. The present report is the fifth interim report submitted by the Special Rapporteur to the General Assembly on the situation of human rights in the Sudan since 1993 (see A/48/601, A/49/539, A/50/569 and A/51/490). The Special Rapporteur has also submitted four reports to the Commission on Human Rights (see E/CN.4/1994/48, E/CN.4/1995/58, E/CN.4/1996/62 and E/CN.4/1997/58).

2. In preparing the present report, the Special Rapporteur undertook a mission to Khartoum between 2 and 10 September 1997. This visit had two aims, beside the traditional investigation, verification and discussion of reports on violations of human rights with the competent authorities of the Government of the Sudan in the framework of the resolutions by the General Assembly and the Commission on Human Rights on the situation of human rights in the Sudan since 1992. Thus, one of the special objectives of the visit was to discuss with government officials and other interested parties the human rights dimensions and implications of the peace agreement between the Government and representatives of several southern political organizations and rebel groups on 21 April 1997 (known as the Khartoum Agreement). The second objective was to receive first-hand information on the latest measures taken by the Government through its Consultative Council for Human Rights regarding the improvement of the situation of human rights in the Sudan and the communication between the Government, the Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights. The meetings and the consultations held during the mission are discussed in the following paragraphs.

3. Regarding the investigating and reporting activities of the Special Rapporteur, the latest Commission on Human Rights resolution 1997/59 of 15 April 1997,[a] adopted without a vote, has established the framework for these activities. In the resolution the Commission expressed its deep concern at continued serious human rights violations by the Government of the Sudan, including extrajudicial killings, arbitrary arrests, detentions without due process, enforced or involuntary disappearances, violations of the rights of women and children, slavery and slavery-like practices, forced displacement of persons and systematic torture, and denial of the freedoms of religion, expression, association and peaceful assembly, and emphasized that it was essential to put an end to violations of human rights in the Sudan; also expressed deep concern at actions by other parties to the conflict, including kidnappings, arbitrary detention, forced conscription, indiscriminate killings, forced displacement and arrest of foreign relief workers without charge; expressed its outrage at the use by all parties to the conflict of military force to disrupt or attack relief efforts, and called for an end to such practices and for those responsible for such actions to be brought to justice; again urged the Government of the Sudan to release all political detainees, to cease all acts of torture and cruel, inhuman or degrading treatment, to close down all clandestine or unacknowledged detention centres and to ensure that all accused persons were held in ordinary police or prison custody where family members and lawyers could visit them, and that such persons received prompt, just and fair trials under internationally recognized standards; called upon the Government to ensure that its security forces, army, police forces, popular defence forces and other paramilitary or civil defence groups were properly

trained and acted in compliance with standards set forth in international humanitarian law, with the assistance of the International Committee of the Red Cross (ICRC) and other appropriate organizations, and that those responsible for violations of such law were brought to justice; urged the Government to investigate reported policies or activities that supported, condoned, encouraged or fostered the sale or trafficking in children, separated children from their families and social backgrounds, forcibly rounded up children from the streets, or that subjected children to forced internment, indoctrination or cruel, inhuman or degrading treatment or punishment, and to terminate immediately any such policies or activities and to bring to trial any persons suspected of supporting or participating in them; also urged the Government to carry out promptly its promised investigations into cases of slavery, slavery, the slave trade, forced labour and similar institutions and practices, as reported by the Special Rapporteur and others, to complete those investigations already begun and to take all appropriate measures to put an immediate end to these practices; encouraged the Government to work actively for the eradication of practices that were directed against and particularly violate the human rights of women and girls, especially in the light of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women;[b] called upon the Government to cease immediately the deliberate and indiscriminate aerial bombardment of civilian targets and relief operations; and called again upon the Government and all parties to the conflict to permit international agencies, humanitarian organizations and donor Governments to deliver humanitarian assistance to all war-affected civilians and to cooperate with initiatives of the Department of Humanitarian Affairs of the United Nations Secretariat and Operation Lifeline Sudan to deliver such assistance.

II. HUMAN RIGHTS DIMENSIONS OF THE APRIL 1997 KHARTOUM AGREEMENT

4. In April 1996 a peace charter was signed at Khartoum between the Government of the Sudan and some of the southern rebel groups, aimed at bringing to an end the civil war that since 1983 has killed an estimated 1.3 million persons, and has resulted in the displacement of some 4 million southerners and hundreds of thousands of refugees into neighbouring countries.

5. On 21 April 1997 the document entitled "The Sudan Peace Agreement" (known also as the Khartoum Agreement) was signed at Khartoum between representatives of the Government of the Sudan, the South Sudan Independent Movement/Army (SSIM/A), the Sudan People's Liberation Movement/Army (SPLM/A) led by Commander Karubino Kawanyn Bol, the South Sudan Independent Groups (SSIG), the Equatoria Defence Forces (EDF), the Union of Sudanese African Parties (USAP) and the Sudanist People's Liberation Army/Movement (SPLA/M), also known as the SPLA/M Bor Group led by Aron Thong Aron. These organizations are united in the larger umbrella-organization of the United Democratic Salvation Front (UDSF), under the chairmanship of Mr. Riek Machar, Chairman and Commander-in-Chief of SSIM/A.

A. Consultations regarding the human rights dimensions of the Agreement

6. As noted above, one of the main purposes of the Special Rapporteur's September 1997 mission to the Sudan was to have a series of consultations with representatives of all signatory parties and their experts regarding the human rights dimensions of the Khartoum Agreement and its effects on the situation of human rights in general in the Sudan. In order to reflect in the most accurate way possible the opinion of the consulted parties, the Special Rapporteur has summarized in the following paragraphs the essential parts of their statements.

7. On 3 September 1997 the Special Rapporteur met with Bishop Gabriel Rorik, State Minister at the Ministry of External Relations, who briefed him on the international and regional aspects of the peace process, and on the attention given by the Government of the Sudan to international human rights instruments, in both the elaboration and the implementation of the documents providing the framework of the peace process. The Special Rapporteur recalled one of the recommendations constantly made in his previous reports, in which he urged the Government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to accede to the Convention on the Elimination of All Forms of Discrimination against Women and to sign the Optional Protocol to the International Covenant on Civil and Political Rights and the Protocol II Additional to the Geneva Conventions of 1949. In response, Bishop Rorik promised that the Ministry of External Relations, in cooperation with the Consultative Council for Human Rights, would study the problem.

8. The Special Rapporteur was briefed on the historical background and the larger political context of the Khartoum Agreement by Mr. Musa al-Makkur, Minister of Animal Resources, both in his capacity as cabinet minister and as a political leader and prince of the Shilluck people of southern Sudan.

9. Mr. John Dor, State Minister for Federal Affairs also briefed the Special Rapporteur on the implications of the Khartoum Agreement at the level of the local administration.

10. On 3 September 1997, the Special Rapporteur met with Mr. Aron Thong Aron. After a comprehensive review of the events following the signature of the Khartoum Agreement in April, Mr. Aron emphasized that in his view there was no reason for the continuation of the war, since the Agreement provided a good framework for peace. What was necessary now was dialogue, since in his opinion the Agreement was meeting the needs of the people. Regarding the political aspects of the situation in southern Sudan, Mr. Aron explained that the core of the question was how to guarantee justice, equality and freedom, not only for the south but for the whole of the Sudan.

11. Mr. Samuel Aru Bol, of USAP, met with the Special Rapporteur on 4 September and told him that the Peace Agreement met most if not all the needs of the south.

12. On 6 September the Special Rapporteur met with Commander Karubino Kawanyn Bol, who expressed the opinion that war was at the root of all violations of human rights and that human rights violations or respect for human rights could

not be discussed until the war had been stopped. He stated that if the Peace Agreement was not respected, the Sudan would be in chaos. He told the Special Rapporteur also that the situation in Gogrial town, controlled by his troops, was stable and quiet, despite recent fighting in Rumbek, Tonj and Warap, which had been taken over by SPLA, led by John Garang. He said that several civilian casualties had resulted from the fighting, primarily from indiscriminate shelling of villages. The Special Rapporteur asked Commander Karubino about the fate of the five wounded SPLA soldiers who had been on the ICRC plane captured by his troops near Gogrial in October 1996. He told the Special Rapporteur that the soldiers, two of whom were his relatives, had joined his troops in Gogrial. Since then, one man had been killed during the fighting in 1997.

13. The Special Rapporteur met on 7 September with Mr. Kawac Makwei, Chairman of SSIG who, in his personal capacity on behalf of his constituency in Aweil, said that his organization would stick with the Khartoum Agreement, and that it was firmly committed to its full implementation. The Special Rapporteur also met with Mr. Paolino Matip Nhial, signatory to the Khartoum Agreement on behalf of SSIM, who said that in the Bentiu area the situation had been stable after the signing of the Agreement until the last week of August 1997, when John Garang's SPLA began attacking the village of Ria. He indicated that 17 civilians had been killed in the fighting, among them 4 women, 3 children and 3 elderly persons. The Special Rapporteur also met with Sultan Daniel Sokiri, from the Bari tribe, who gave an insight into the daily life of his community and the problems they were encountering.

14. In relation to the human rights aspects and implications of the Khartoum Agreement, the Special Rapporteur also met a number of individuals, who as negotiators or experts had participated in the negotiation process of the April document and to some extent had also been involved in the preparation of constitutional decree No. 14/1997: Mr. David Oshang, Mr. Lawrence Lual-Akwec Lual and Mr. Taban Deng. They all emphasized, in concurrence with the statements of the representatives of the signatory parties referred to above, that the ultimate basis and condition of success of the Khartoum Agreement was the mutual trust of the parties.

B. Provisions of the Khartoum Agreement and constitutional decree No. 14/1997 on human rights and fundamental freedoms

15. Both the Khartoum Agreement and constitutional decree No. 14/1997[c] explicitly recognized the principle and the right to self-determination in relation to southern Sudan. As the legal documents recognizing the right to self-determination of the people of the southern Sudan, it is important to note that the two documents contain different wording, which may lead to differing interpretations:

(a) Khartoum Agreement states: "The people of south Sudan shall exercise the right to self-determination through a referendum."

(b) Constitutional decree No. 14/1997 states: "Citizens of the southern states shall exercise the right to self-determination through a referendum."

16. The possibility of the peaceful secession of the southern states is provided, however, by both documents:

(a) Chapter seven of the Khartoum Agreement, entitled "Referendum", contains the following provisions:

"1. By this Agreement the right of the people of southern Sudan to determine their political aspirations and to pursue their economic, social and cultural development is hereby affirmed.

"2. The people of southern Sudan shall exercise this right in a referendum before the end of the interim period.

"3. Options in the referendum shall be: a. unity; and b. secession.

"4. The referendum shall be free, fair and be conducted by a special referendum commission to be formed by presidential decree in consultation with the Coordinating Council.

"5. Eligible voters in the referendum shall be southern Sudanese people who have attained the age of 18 years and above residing inside and outside the Sudan.

"6. The vote shall be by secret ballot.

"7. To ensure the free and fair conduct of the referendum, the Special Rapporteur shall invite observers as follows: (a) the Organization of African Unity, the League of Arab States, the United Nations, religious bodies, the Intergovernmental Authority for Drought and Development (IGADD), national and foreign non-governmental organizations, and any other countries; and (b) national and international media and journalists.

"8. The parties agree to respect, abide by and implement in good faith the result of the referendum."

(b) Constitutional decree No. 14/1997 provides:

"16. (1) The referendum in the southern states shall be on the following options, namely: a. unity; and b. secession.

"(2) The referendum shall be conducted by a special referendum committee, to be established by law, and the voting shall be secret.

"(3) There shall be qualified for voting in the referendum any citizen of the southern states, who has attained 18 years of age and resides in or outside the same.

"(4) The special referendum committee provided for in subarticle (2) shall invite observers to ensure free and fair conduct of the referendum."

17. There is no definition of the term "people of south Sudan" in any of the documents. The Special Rapporteur was informed by experts of the Ministry of

Justice and experts of the signatory parties other than the Government that all southerners would have the right to vote, including those residing in the north or living abroad. The experts stated that there was no need for a normative definition to be provided in a legal document because it was evident who a southerner was. With regard to the term "citizens of the southern states", the experts stated on the same occasion that there was no difference between citizens of southern states and Sudanese citizens in general and, further, that any interpretation of constitutional decree No. 14/1997 should be in accordance with article 18 of the decree, which stated that: the Peace Agreement should be the basic reference in the implementation and interpretation of the provisions of the decree.

18. Large parts of the Khartoum Agreement and of constitutional decree No. 14/1997 deal with the question of freedom of religion. While the Agreement sets forth the basic principles in this regard in chapter 3, "Political issues", in the section entitled "Constitutional and legal matters", the decree includes provisions on these principles in chapter 2, "Guiding principles", article 3, paragraphs 1-4:

(a) The Khartoum Agreement states:

"1. The Sudan is a multiracial, multi-ethnic, multicultural and multireligious society. Islam is the religion of the majority of the population and Christianity and the African creeds are followed by a considerable number of citizens. Nevertheless the basis of rights and duties in the Sudan shall be citizenship, and all Sudanese shall equally share in all aspects of life and political responsibilities on the basis of citizenship.

"2. Freedom of religion, belief and worship shall be guaranteed.

"3. A suitable atmosphere shall be maintained for practising, worship, dawa, proselytization and preaching.

"4. No citizen shall be coerced to embrace any faith or religion.

"5. There shall be no legislation that would adversely affect the religious rights of any citizen.

"6. a. Shariah and custom shall be sources of legislation; and b. on the issue of Shariah, the parties agreed on a formula under which laws of a general nature that are based on general principles common to the states shall apply at the national level, provided that the states shall have the right to enact any complementary legislation to federal legislation on matters that are peculiar to them. This power shall be exercised in addition to the powers the states exercise on matters designated as falling within their jurisdiction, including the development of customary law."

(b) Constitutional decree No. 14/1997 provides:

"3. (1) The Sudan is a multiracial, multicultural and multireligious State. Islam is the religion of the majority of the population, and Christianity and African creeds have considerable adherents.

"(2) Freedom of religion, belief, worship rites, missionary and preaching activity are guaranteed to all, and no citizen shall be coerced to embrace any religion or creed.

"(3) No legislation that infringes on fundamental freedoms and rights of citizens shall be promulgated.

"(4) a. Shariah and custom are the sources of legislation. b. General laws, derived from the general principles common between states, shall be applied nationally. States having peculiarity may promulgate, with respect to the peculiarity thereof, such laws as may be complementary to the federal laws, in addition to the right of states to legislate, each as to such function as may correspond thereto, including custom and codification of the same."

19. With regard to citizenship, there is also a difference in wording. As quoted above:

(a) The Khartoum Agreement refers to citizenship vis-à-vis the multiracial, multicultural and multi-ethnic features of the Sudan and states that:

"1. Nevertheless the basis of the rights and duties in the Sudan shall be citizenship, and all Sudanese shall share equally in all aspects of life and political responsibilities on the basis of citizenship";

(b) Constitutional decree No 14/1997 provides:

"(5) Citizenship is the basis of public rights and duties and all Sudanese participate by virtue of the citizenship thereof, on an equal basis in political life.

"(6) Consultation and democracy shall be practised through congresses and national conventions to develop the same; all citizens shall coalesce in forums and organizations, devoid of sectarianism and totalitarianism.

"...

"(8) Citizens of the southern states and all the other states shall participate in all federal, political and constitutional institutions. In that regard the federal Government shall observe the standards of efficiency, capability, integrity, responsibility and equality of opportunity between the citizens."

20. The Khartoum Agreement dedicates two sections to the fundamental rights and freedoms of citizens and their constitutional guarantees. The principles

related to the independence of the judiciary are also developed in a separate section, as well as the general principles of participatory democracy framed by the signatory parties to the Khartoum Agreement. The most important elements are the following:

> "1. The Supreme Court is the custodian of the Constitution and is thus entrusted with the protection and interpretation of the Constitution.
>
> "2. The Constitution shall enshrine the following principles: a. There shall be no punishment except as provided for by the law; and b. Every person is presumed innocent until the contrary is proved.
>
> "...
>
> "3. The bill of rights and freedoms shall be enshrined in the Constitution.
>
> "...
>
> "5. All personal matters such as marriage, divorce, parentage and inheritance shall be governed by the religion and custom of those involved."

As it results from these provisions, the signatories of the Khartoum Agreement envisaged the adoption of a constitution in the foreseeable future, which would replace constitutional decrees Nos. 1 to 13 in force in April 1997. As described in paragraph 22 below, the Special Rapporteur was briefed on this issue in a special meeting with the Chairman of the commission created to work on the draft of the new constitution for the Republic of the Sudan. Partly because of the preparation of the new constitution, and partly owing to the fact that previous constitutional decrees contain provisions on the fundamental freedoms and citizens rights, constitutional decree No. 14/1997 does not provide further details in this regard other than those already cited. Regarding the judiciary, the decree states that: the judiciary shall be independent and decentralized.

21. Neither the Khartoum Agreement or constitutional decree No. 14/1997 have embraced the idea of a political system based on the principle of free competition of political parties. It should also be mentioned that separate legislation, "The Southern States (Peace and Transitional Measures) Act of 1997", provides the framework for a general amnesty: "The President of the Republic may, by a declaration, grant unconditional general amnesty to any member of the Southern Sudan Defence Force, who has on, or after 16 May 1983 committed inside or outside the Sudan an unlawful act, or omission, and such an act or omission relating to desertion, mutiny, disobedience, sedition or revolution against the State."

III. COMMUNICATIONS WITH THE GOVERNMENT OF THE SUDAN AND RECENT DEVELOPMENTS REGARDING THE SITUATION OF HUMAN RIGHTS

22. On 8 September 1997, the Special Rapporteur met the Chairman of the National Commission for the Preparation of the Constitution, former Chief-Justice Professor Khalafallah al-Rashid, appointed by the President on 3 July 1997. On the same occasion Mr. Dafallah al-Radi, a former Deputy Chief-Justice, was nominated as rapporteur of the Commission, and Mr. Abbas Ibrahim al-Nour as Chairman of the Technical Committee. The Commission is expected to have between 300 and 350 members, appointed by its Chairman, the Rapporteur and the Chairman of the Technical Committee, the Committee comprising between 50 or 60 members. Professor al-Rashid told the Special Rapporteur that no strict guidelines had been defined for the Commission, but in his view the draft would include the provisions of the Khartoum Agreement on citizenship and fundamental freedoms and would elaborate on the principles of the independence of the judiciary, the sura or consultation system and federalism. A referendum to approve the constitution is being considered. In an earlier interview with the Sudan News Agency (SUNA), Professor al-Rashid said that the new constitution should be a model for national, political and social unity. Although no deadline was established, the Chairman of the Commission told the Special Rapporteur that he expected that by the end of March 1998 the draft might be submitted to the National Assembly. By 8 September the Commission had not yet been created, but the process of contacting and inviting possible members to participate in the Commission was under way. Answering a question by the Special Rapporteur, Professor al-Rashid said that constitutional decrees Nos. 1 to 14 would be repealed with the adoption of the new constitution.

23. On 6 September the Special Rapporteur met with Mr. Kamal Abdel Gadir Balla, representing the National Council for Child Welfare (see also A/51/490, para. 33), who briefed him on the latest developments regarding the situation of street children, an issue addressed as one of the matters of priority in the previous reports on the situation of human rights in the Sudan. Mr. Balla informed the Special Rapporteur that the camp for children at Abu Dhom had been closed in February 1997, and that some of the children had been reunited with their families, others removed to new reception centres opened in Khartoum-Soba, Khatroum-El Basher and other major towns in the north situated in the Medani area, Ghezira and Sinnar states. The documentation provided on this occasion confirmed the findings of the previous reports of the Special Rapporteur and demonstrated that his recommendations had been well founded.

A. Reports of the Special Committee on Allegations of Enforced or Involuntary Disappearances and Reported Cases of Slavery

24. The Special Committee on Allegations of Enforced or Involuntary Disappearances and Reported Cases of Slavery was created by the Government of the Sudan in May 1996 (see A/51/490, para. 8). After its creation, the Special Committee carried out two fact-finding missions. Two of its reports reached the Special Rapporteur before the completion of the present interim report. The first document, dated 12 June 1996, describes the findings of the Special

Committee in the course of a visit to Southern Kordofan. The second report, dated 15 August 1996, concerns allegations of enforced or involuntary disappearances of 240 Sudanese citizens from a number of locations in the Nuba Mountains area (Toror, Agad, Umm Dorein and Umm Sirdiba), as contained in a letter dated 11 December 1995 from the Chairman of the Working Group on Enforced or Involuntary Disappearances and the 1996 report of the Special Rapporteur on the situation of human rights in the Sudan (E/CN.4/1996/62, para. 38). Both reports of the Special Committee essentially refute the information and allegations submitted to them by the Working Group on Enforced or Involuntary Disappearances. The Special Committee concludes that certain details contained in the allegations submitted by the source demonstrate a misperception of the realities of the situation, or that in some cases the information submitted is incomplete or erroneous. Unfortunately the reports cannot be reproduced in their entirety owing to their length. Nevertheless, the Special Rapporteur considers that it is necessary to quote the main findings and conclusion of both reports of the Special Committee.

1. Report on the visit to Southern Kordofan

25. In a meeting of the members of the Special Committee with tribal leaders of the Nuba Mountains, the chiefs stated that the practice of slavery had ended with the advent of the Anglo-Egyptian rule and had never recurred since, as there had been peaceful coexistence and social integration, which had led to strong homogeneity between the Nubans and the Arabs. Nevertheless, as mentioned by the tribal leaders, those relations had recently began to falter when members of the Nuban tribes joined the rebel movement. Although that had led to the resumption of tribal raids for the purpose of looting and highway robbery, it did not entail raids aimed at the procurement of slaves or similar practices. The tribal leaders also denied that there was any sale or purchase of slaves and instead expressed surprise and disapproval at the very notion. Counsellor Mohamed Ahmed el Ghali, director of the legal department in the state of Kordofan, said in a letter to the Special Committee that domestic servants worked for a wage and that they originated from both Arab and Nuban tribes. He also stated that he personally employed an Arab woman in his home, that she worked for him with the knowledge of her own family and that she received her full salary. He added that domestic work was an honourable occupation for anyone who showed the willingness and capability for it, irrespective of sex, colour or tribe. It was an occupation governed by the Domestic Servants' Act of 1955.

26. The Special Committee summarized its conclusions as following:

(a) The Special Committee obtained no information that confirmed that the slave trade was practised by means of sale and purchase in the Nuba Mountains and the surrounding area. On the contrary, the Committee obtained information that controverted such practice;

(b) Documents submitted to the Special Committee and the interviews that it conducted with citizens and officials refuted the occurrence of rape in the area of Umm Surdibba. The most significant information obtained by the Commission in that respect was provided by Al-Amin Mando Ismail Barky, who

belonged to the Nuban tribe of Balmoro. From the information provided to it, the Special Committee also ruled out the possibility of organized mass rape having occurred in any of the governorates of the state of Southern Kordofan;

(c) Having questioned officers from the police, the People's Armed Forces and the administrative authorities, as well as the commander of the Southern Kordofan military zone, the officers working with him and their domestic servants, the Special Committee came to learn of several ordinary cases of domestic servants from Nuban and Arab tribes. It was ascertained that they were all employed on agreed fixed salaries. The occupation was governed by the Domestic Servants' Act of 1955, which remained in effect to date. There was no indication that the practice involved any slavery or forced labour;

(d) The Special Committee did not come across any case of large or small ranches allocated to government minions where Nubans were forcibly employed. Nor did it find any indication that land had been confiscated from Nubans for allocation to senior officials;

(e) The Special Committee decided to respond to the request of the Special Rapporteur to visit the town of Wau in order to investigate the allegations that children had been abducted from villages situated along the Babanusa-Wau railway. The visit to Wau was therefore added to the Special Committee's plan of action.

2. Report on alleged cases of enforced or involuntary disappearances

27. In his 1996 report to the Commission on Human Rights (E/CN.4/1996/62, para. 38) the Special Rapporteur referred to allegations of enforced or involuntary disappearances from Toror village reported to him in 1995 after the Government of the Sudan army took the village from SPLA. The same allegation was addressed by the Working Group on Enforced or Involuntary Disappearances and communicated to the Government of the Sudan in a letter by its Chairman. In its 15 August 1995 report, the Special Committee, referring to events that had allegedly resulted in the disappearances, stated that it had met Staff Brigadier Sulaiman Abdullah Adam, the commander of the armed forces, and had asked him whether the armed forces had raided the village of Toror on 21 February 1995 and brought back some of its residents. He replied that the armed forces had indeed combed that area (the village of Toror) but he denied that they had brought back any residents of that village or compelled them to go to the peace village at Agab. He said that people were normally eager to go to the peace villages voluntarily and of their own accord in view of the good treatment that they received there, in contrast to the way in which they were treated in the rebel-held areas and, consequently, they took the first opportunity to leave the villages, which had fallen into the clutches of rebels.

28. The Special Committee also met the Commander of the Popular Defence Forces (PDF), who affirmed that his forces were operating in accordance with the law and under the command of the armed forces. In conformity with the Armed Forces Act and the PDF Act of 1989, they never acted alone.

29. The Special Committee visited the Peace and Resettlement Department, where it met the acting head of the Department, who informed it that the peace village at Agab had received, and was continuing to receive, large numbers of persons who had come back from Toror. Around 21 February 1995, the Department had received many men, women and children, who were completely naked, and had provided them with clothing, accommodation and food. He said that the Department kept lists of all the persons whom it had received at the village, including their date of arrival at and departure from the village.

30. The Special Committee met a large number of individuals and had a series of interviews with some of the persons who had allegedly disappeared from Toror. When the Special Committee spoke with some of the persons whose whereabouts had been indicated by the mayors, sheiks and chiefs, they all denied having been abducted by the armed forces and affirmed that they had left Toror and gone to Agab voluntarily and of their own accord, either before or after the arrival of the armed forces in Toror. They claimed to know a large number of the citizens. A witness stated that all of those on the list provided by the Working Group on Enforced or Involuntary Disappearances at the time of the Special Committee's visit had come to Agab voluntarily and of their own accord and most of them were living in Agab. The Special Committee met Habiba Dafallah, one of those who had allegedly disappeared, in Agab, and in her testimony she confirmed that she had not been abducted or coerced by the armed forces or PDF. On the contrary, her departure to Agab had been motivated by the lack of food and clothing in the areas controlled by the rebel movement. The report mentioned that some of the persons on the list had gone to various other areas of the Sudan, such as Renk, the village of Dandur to the east of the town of Kadugli, the Habila agricultural project area in the province of Southern Kordofan (the Eastern Mountains) and the town of Doka in the province of Gedaref in eastern Sudan, while others had gone to the province of Khartoum.

31. The Special Committee met 36 of the persons who were allegedly abducted by the people's armed forces when the latter searched Toror. It was found that:

(a) Those persons had come to Agab at different times before, during and after the search operation by the people's armed forces in that district. All of them had arrived separately, with the exception of 60 elderly persons who, of their own accord, had preferred to travel with the people's armed forces;

(b) They all said that the presence of the people's armed forces in Toror had provided them with security and had freed them from the clutches of the rebels, who had stripped them of all their property, including the clothes that they were wearing. They had departed for Agab because the rebels had burnt the village of Toror in which they were living;

(c) All of those who had survived were now in good health and leading a normal life. Some had died of natural causes, with the exception of the four persons who, according to their families and relatives, had been killed by the rebels: Al-Fakki Marjan, Mustafa Marjan, Juma'a Mustafa and Kuku Khalil or Umar Khalil.

32. The whereabouts of more than 180 persons were ascertained through their relatives.

33. The Special Committee's findings included photographs and taped recordings of the interviews.

B. Communications regarding the rights of women

34. On 23 October 1996 a Public Order Act on the status on women was reportedly enacted by the Khartoum State Government. In his 1997 report to the Commission on Human Rights, the Special Rapporteur reviewed some of the provisions of the Act and stated that the rights of women had always been among the priorities addressed in his previous reports. The Act raised very serious questions regarding the freedom of movement of women living in the capital city and the surrounding area. Sources in Khartoum referred to the legislation as instituting "strict sexual segregation in public" (see E/CN.4/1997/58, paras. 44 and 55).

35. The Special Rapporteur met with Mrs. Intisar Abu Nagma and Mrs. Somaia Abu Kashawa, representatives of the General Federation of Sudanese Women, in Khartoum on 4 September 1997. The representatives maintained that the Special Rapporteur's 1997 report had stated inaccurately that on public transportation vehicles women should not sit on seats that were near the drivers and that in public gatherings, including those organized in schools, farms, educational institutions and clubs, women should be separated from men by curtains. The representatives stated also that, in practice, the first door of public transportation vehicles was reserved for the use of women, and that women sat next to or behind the driver. Also, they stated that there was no reference in the Act to any curtain that should separate women from men. The representatives emphasized that the provisions to which the Special Rapporteur had referred had been advanced as part of a proposal made during the debate in the local council, but had not been incorporated in the Act.

36. During the same meeting, the Special Rapporteur was provided with a copy in Arabic of the 1996 Public Order Act, which was subsequently translated into English by representatives of the General Federation of Sudanese Women. The Special Rapporteur wishes to express his gratitude for the efforts to provide him with a translation before his departure from Khartoum. The Special Rapporteur learned, however, after he had begun drafting the present report, that the documentation, which included a copy of the Public Order Act, contained legislation adopted on 28 March 1996. There was no reference in the papers he received during the September 1997 mission to any legislation adopted in October 1996. It is not yet clear what is the current status of the October 1996 Act, which the Special Rapporteur quoted in his 1997 report to the Commission on Human Rights (see E/CN.4/1997/58, para. 44). In his previous report and during consultations with officials of the Government of the Sudan and representatives of the General Federation of Sudanese Women the Special Rapporteur constantly and unequivocally referred to the October 1996 Public Order Act, as he was not aware of any legislation on the issue adopted in March 1996.

37. In order to avoid further misunderstandings that may occur in relation to the issue, the Special Rapporteur considers it necessary to reproduce in the present report the most relevant articles, in their entirety, of the document he received during his September 1997 mission to Khartoum. It should be mentioned

that the following provisions were implemented in several instances by the competent authorities (especially the Khartoum Popular Police Forces (PPF)) during 1996 and 1997. The Special Rapporteur has received numerous reports on the executions of the punishments provided by the Act, especially lashing of women carried out at PPF headquarters.

38. In accordance with article 41 of constitutional decree No. 11/1994, the Government of the State of Khartoum issued the following law:

"Laws of Khartoum State. Provisional Decree on the Public Order Act in Khartoum State for 1996

"Chapter one

"Regulation for holding private and public parties

"...

"7. (1) Any person who gets a licence for organizing a singing party shall consider the following:

"(a) Ending the party at a time not exceeding 11 p.m.;

"(b) No mixed dancing between men and women is allowed. Women shall not be permitted to dance in front of men;

"(c) No guns shall be fired at the parties;

"(d) No immoral songs shall be performed.

"(2) The police authorities shall adopt the required measures for removing the violations of the regulations which are mentioned in paragraph 7(1), including stopping the party.

"...

"Chapter three

"Public vehicles: regulations on the use of public vehicles

"9. (1) (a) One of the doors and 10 (ten) seats on public buses shall be assigned for women on State routes;

"(b) Men are categorically prevented from sitting in places assigned to women, while women are not allowed to sit in places assigned to men;

"(c) No words, expressions, pictures or drawings are allowed to be written or posted on public vehicles if they violate faith, morals and good conduct;

"(d) The shading of private and public vehicles is not allowed, unless a written permit has been given by or on behalf of the Minister of Interior;

"(2) In the case of public vehicles, other than those mentioned in paragraph (1) (a), 25 per cent of the seats shall be assigned to women.

"...

"Chapter five

"Women's hairdressing salons

"Obtaining licences

"13. (a) No one shall practise the hairdressing profession without obtaining a licence from the authorized locality on the recommendation of the authorized People's Committee.

"(b) The application for the licence shall be made on the form prepared by the locality, after acquiring the commercial and health licences.

"Regulations of work at women's hairdressing salons

"14. (a) Women's hairdressing salons shall not employ men.

"(b) Men shall not enter women's hairdressing salons.

"(c) A sign shall be put in front of the salon stating the provisions of subparagraph (b) of this article.

"(d) The salon shall have one door opening to the road, except salons located at multi-floor buildings.

"(e) The director or the owner of the salon shall comply with the required health terms and safety measures.

"Granting of licences for men

"15. (1) Men may own a women's hairdressing salon in accordance with the conditions and regulations issued by the authorized locality.

"(2) In case of awarding the licence in accordance with paragraph (1) of this article, the salon shall be administered by a woman.

"Eligibility of women employed at women's hairdressing salons

"16. (a) Owners and directors of salons shall not employ any woman to work at the salon, except after getting assurances that she is of good conduct.

"(b) The woman worker shall be technically qualified and hold a certificate from an authorized body.

"(c) The age of the woman director of the salon shall not be less than 35 years.

"Inspection of salons

"17. The licensing authority and public order police may enter hairdressing salons at any time for the purpose of inspection of the application of the provisions of this Act, provided that the inspection is made by women.

"Women's dress tailoring places

"18. (a) Women's dress tailoring profession shall not be practised except after obtaining a licence from the local authorities.

"(b) The local authorities shall formulate regulations guaranteeing public discipline for workers of the place."

C. Results of the investigation carried out by the Juba Commission into the events of 1992

39. In June and July 1992 fighting between the Government of the Sudan army and SPLA took place in and around the town of Juba. The SPLA attack was repelled, and several reports indicate that following the cessation of fighting the security services arrested hundreds of army and Juba police personnel and civilians, including Sudanese nationals working with international aid agencies, in particular the United States Agency for International Development. It was reported at that time by numerous independent sources that the persons arrested were severely tortured during detention and some of them were tried by special courts based only on their confession taken under torture and sentenced to death. The death sentences were summarily executed without the possibility of pardon. It was reported also that some of those arrested, whose whereabouts are not yet known by their families, were killed or died during torture while in detention. Several individuals were reported as still missing in 1996. Since 1993 the Special Rapporteur had continuously received confirmation of earlier reports in this regard, as well as new information and reports on the situation in Juba between July and November 1992. These background remarks were necessary in order to underline the context of the report received by the Special Rapporteur, which may be summarized as follows.

40. Owing to the reaction of the international community to the reports and information made public in August-September 1992, the President of the Revolutionary Command Council issued on 26 November 1992 a decree concerning the creation of a judicial commission (known as the Juba Commission) to investigate and report to the President on the events that took place in Juba in 1992. The Special Rapporteur provided to the Government of the Sudan, specifically the Minister of Justice, relevant reports and information he had received on the Juba incident, including the names of 230 individuals, indicating their age and profession or rank, who had allegedly disappeared or who had allegedly been

tortured under interrogation by the security services of the Sudan. These reports and information were placed before the Chairman of the Juba Commission, High Court Judge Mr. Mohammed Ahmed Abu Sin, with whom the Special Rapporteur met in September and December 1993. The Special Rapporteur was told in 1993 that the resulting report of the Juba Commission would be submitted to the President who would decide whether it could made public.

41. On 21 May 1997, the Advisory Council for Human Rights released the report entitled: "Publication of the results of the investigation carried out by the Judicial Commission about the Juba event of 1992" (hereinafter the Juba report). The Special Rapporteur intends to address some details of this report in his final report to be presented to the Commission on Human Rights in 1998. Therefore, in the present report, he summarizes or quotes only the most relevant parts of the Juba report, in order to formulate preliminary conclusions, emphasizing at the same time some aspects he considers requiring further clarification by the competent authorities.

42. The 11-page Juba report is divided into three parts: (a) actions taken by the Juba Commission; (b) general facts; and (c) facts concerning some Sudanese nationals working with foreign organizations. The Juba Commission began its investigations in 1993 and completed its report in May 1997.

43. The first part describes the methodology of work of the Juba Commission, consisting in principal of two elements: (a) individual interviews with all those who could provide relevant information to the Commission, including civilians and local officials, and an inspection of the buildings where the military tribunals carried out their activities in 1992; and (b) consultation of the files of the trials held in 1992. An announcement was made in Juba about the Commission's ongoing investigations, encouraging the citizens to contact it directly.

44. The second part describes the events, including the evolution of the military situation in and around Juba from the end of 1991 to June 1992. The most relevant parts regarding the situation of human rights are included in the following paragraphs, which the Special Rapporteur considers necessary to quote in their entirety:

> "20. These bombardments created a wave of terror among the civilians, who rushed to escape the town for fear of it falling into the hands of the insurgents, or its isolation from the outside world or of fear from being hit. It became clear later that large numbers of civilians fled Juba haphazardly to Khartoum or to other places, thus explaining some cases of the missing persons.
>
> "21. Arrests were made after each of the two attacks on the town of Juba in June and July 1992.
>
> "22. The arrests were followed by preliminary verbal interrogation and investigations with the detainees. As a result of these preliminary investigations, all those who had no evidence against them were released and all those who had evidence against them were referred to investigation

committees and hence submitted to trials before the major field tribunals formed according to the armed forces law.

"23. All civilians were released except 25 of them who were referred to investigation committees, then to military tribunals formed after the attack on the town. It is to be noted that the investigation involved both military and civilian persons, after permission was obtained from the Attorney General to allow the military investigation committees to carry out investigations with civilians.

"24. Among the armed forces, all detainees were released except 84 of them, who were referred to investigation committees and then to trial. As for the Unified Police Forces, 53 of its officers and members were referred to investigation committees and then to trial.

"25. Among the prominent persons arrested after the second attack, was Bishop David Tombe, who was arrested on 2 August 1992 after it was found that he possessed a communication set used to assist the insurgents and provided them with information. He was arrested after being summoned through his boss, Archbishop Powlino of the Catholic Church. Bishop David Tombe was later released on a special parole issued by the Chairman of the Revolutionary Command Council and Cabinet at that time.

"26. The airport director Taaban Alissa, accused of using a communication set to guide the insurgents, was arrested. He was committed to trial. Also arrested were Mark Laboke Jenner, head of the Clerk Office of the European Commission, and Andrew Tombe, an employee of the office in Juba of USAID. They were committed to trial, as we shall explain later. These arrests were followed by the cessation of bombardment on Juba Airport.

"27. Seven military tribunals were formed and named the 'major field tribunals for trials of those arrested after the Juba events'. These tribunals were presided over by high military personnel up to the rank of brigadier.

"28. Civilian detainees were committed for trial before the same military tribunals for military detainees. All trials were held at the headquarters of the military zone command in Juba, in halls specially adopted for this purpose.

"29. As regards the civilians, their trial before military tribunals was carried out after obtaining permission from the Attorney General. The permission was requested by the Commander-in-Chief of the People's Armed Forces, who attached, with the request, a list of names of the accused civilians.

"30. In addition to the preliminary investigations and interrogations, the trial was also preceded by an investigation carried out by a committee formed of three army officers according to the law of the People's Armed Forces.

"31. Trial procedures start by the prosecution representatives presenting their case. Then the defendant is interrogated. In case of his confession of guilt, the judgement is issued on the basis of his confession. In case of denial a hearing takes place for the witnesses for the prosecution and for the witnesses for the defence. The reasons for the sentence are written in brief. Then the sentence is written down and signed by the president of the tribunal and is forwarded to the commander of the military zone for confirmation. Thereafter, it is forwarded to the Commander-in-Chief for ratification.

"32. Trials were conducted by summary procedure whereby a brief account is recorded about the incidents, names of the witnesses for the prosecution and names of the witnesses for the defence. Then the reasons of the judgement are written in brief. Thereafter, the sentence is written down and signed by the president of the tribunal. The confirmation and ratification are done in the manner explained above.

"33. In a meeting with Mr. Gáspár Bíró (the Special Rapporteur on human rights in the Sudan) held upon his request, the fact-finding Commission explained many lists and, to save time and effort, the Commission prefers to have one list of all the persons whose fate is being investigated. The Commission requested the Human Rights Centre in Geneva to provide it with one accurate comprehensive list of all the persons whose fate is being investigated. The Commission had not received a reply until the time of the writing of the report. This was one of the reasons for the delay in the Commission's work.

"34. Therefore, the Commission compiled all the lists available, and incorporated them in one unified list, to be a reference for the inquiry on the fate of the persons listed, whose number was 240 persons. Henceforth, the Commission compared this list with the lists of those submitted to trial, and concluded the following:

"(a) Ninety-four persons were convicted by tribunals formed according to the law. The sentences ranged between execution and imprisonment;

"(b) The tribunals acquitted 11 persons.

"35. As for the rest of persons listed, the Commission concluded the following probabilities:

"(a) Killed in bombardment and exchange of fire or during the battles and armed skirmishes, as the numbers of those killed were very large and their bodies remained for a long time unburied and petrified to the extent that their features could not be identified;

"(b) Defection from the service of the various regular forces;

"(c) Voluntarily joining the insurgent movement;

"(d) Forcibly taken away by the insurgents after the attack;

"(e) Boarding the relief aircrafts which used to bring supplies to Juba and return empty to Khartoum. Not less than 500 persons were counted in one day;

"(f) Persons who chose to disappear and were arrested during and after the events. They were investigated and released. Later, it appeared from interrogation of others that they were involved and wanted for arrest;

"(g) Persons from the police force, game and prison guards with orders for their arrest, and lists of their names were sent to their unit headquarters in Juba, but could not be arrested as they were in areas out of Juba. On learning of the orders for their arrest and the actual arrest of their colleagues in Juba, they left their units and disappeared. Those were wrongly included among persons arrested and their fate was unknown."

45. The third part of the Juba report describes seven individual cases and comprises a brief conclusion, as follows:

"1. As regards Mr. Andrew Giftana Tombe, an employee of the office of USAID in Juba, the Commission found out that he was arrested and submitted to trial, being accused of joining an illegal organization, cooperating with the insurgents and aimed at the occupation of Juba by armed forces; of participation in guidance and transportation of explosives during the events; and using illegally communication sets to contact the insurgents. Confessions of these accusations were recorded before the Commission of Inquiry and before the tribunal. Hunting Guard Captain Henry Maw Samuel presented testimony that Mr. Tombe was tried and convicted by the major field tribunal and sentenced to death on 13 August 1992, that is, more than two months after the events, and was executed.

"2. As regards Mr. Bedwin Angelino Tally, who worked as a storekeeper in the office of USAID, he was arrested and committed to trial accused of shielding an illegal organization and participating in its activities. His confession was recorded. In addition, Mr. Andrew Tombe presented testimony against him. Accordingly, he was tried and convicted by a major field tribunal in Juba and sentenced to death on 14 August 1992, that is, more than two months after the events, and was executed.

"3. As regards Mr. Dominic Moris Olaya, an employee of the office of USAID, he was arrested and submitted to trial, accused of participation in the activities of the above-mentioned illegal organization. His confession was recorded before the tribunal, which convicted him according to his confession and the reports and sentenced him to death in August 1992, that is, more than two months after the events, and he was executed.

"4. As regards Mr. Sisilim Lako Lombe, a gardener in the office of USAID, he was arrested and submitted to trial accused of participation in all the activities of that illegal organization. In August 1992, the major field tribunal sentenced him to death after convicting him according to his confession and the reports, that is, more than two months after the events, and he was executed.

"5. As regards Mr. Mark Laboke, who was working as a Chief Clerk in the office of the European Commission in Juba, he was arrested and submitted to trial, accused of participation in all the activities of that illegal organization and using an unlicensed communication set to contact the insurgents. His confession was recorded before the tribunal and Mr. Andrew Tombe testified against him. The tribunal sentenced him to death after being convicted on 12 August 1992, that is, more than two months after the events, and he was executed.

"6. As regards Mr. Michael Motton Attija, an employee of the United Nations Development Programme (UNDP) office in Juba, he was arrested in the first days of the events and was released after investigation and lack of evidence against him. Later, after sufficient evidence was found against him, it was decided to rearrest him. But it was not possible to find him and the authorities are still searching for him. Information obtained by the Commission from different sources indicates that he belongs to the border tribes between the Sudan and Uganda and that he was an officer in the Ugandan Army during the regime of ex-President Idi Amin. He came later to Juba and worked with the UNDP office. The sources explain his disappearance that he might have crossed the border to Uganda after his release. Of course, there is a probability that he might have been killed during the random bombardment.

"7. As regards Mr. Rocko Konir Biro, who was a driver working in the United Nations Children's Fund (UNICEF) office of Juba, reports indicate that he was arrested with others and released for lack of evidence against him. Probably he was among the victims of the random bombardment, particularly as he was residing in Lulogo quarter for the displaced, which was burned during the second attack, causing the death of many persons."

46. The conclusion of the Juba report is as follows:

"In conclusion, the Advisory Council for Human Rights affirms that its declaration of the results of the investigation comes within the responsibility of the Government of the Sudan to protect and develop human rights, in compliance with the international instruments adopted in this respect and within the framework of its cooperation with the international community and its competent mechanisms."

IV. IMPROVING THE FLOW OF INFORMATION, THE INDEPENDENT VERIFICATION OF REPORTS AND ASSESSMENT OF POSSIBILITIES OF TECHNICAL ASSISTANCE AND COOPERATION IN THE FIELD OF HUMAN RIGHTS

47. Representatives of the Consultative Council for Human Rights of the Government of the Sudan expressed on various occasions during the past year their interest in closer cooperation with the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan to improve the flow of information and independent verification of reports on the situation of human

rights in the Sudan. Interest was expressed also in exploring possibilities for future cooperation with the Office of the High Commissioner in the field of technical assistance and advisory services.

48. The Special Rapporteur is of the opinion that any cooperation in the field of technical assistance and advisory services should be initiated with special regard to the improvement in the communication and the flow of information between the Government of the Sudan and the Office of the High Commissioner and the Special Rapporteur. The following aspects should be taken into consideration in this regard:

(a) The direct and accelerated exchange of information between the Consultative Council on the one hand and the Office of the High Commissioner and the Special Rapporteur on the other;

(b) The more timely transmission of the replies to the communications received by the Consultative Council from the Special Rapporteur and the Office of the High Commissioner, including the transmission of legal documents, statistics and any other relevant documentation;

(c) The creation of the conditions that are necessary for an impartial, professional, rapid and objective verification of the information and reports received regarding cases of violations of human rights;

(d) Regular contacts between representatives of the Office of the High Commissioner and the Consultative Council;

(e) Improved coordination between the Office of the High Commissioner and other United Nations organs and agencies dealing within their mandates with specific aspects of the situation of human rights in the Sudan.

49. With regard to the ways and means to realize those goals and at the same time contribute to the further development of a proper environment and mutual confidence between the concerned parties, the Special Rapporteur believes that basically the following two practical solutions can be envisaged:

(a) The establishment of periodic direct contacts in Khartoum between representatives of the Office of the High Commissioner and the Government of the Sudan in order to assess the possibilities for, and at a later stage to ensure the instant communication and verification of, any information or reports regarding the situation of human rights in the Sudan;

(b) Regarding the conflict zones, the implementation, without delay, in cooperation of all parties concerned of the recommendation contained in paragraph 25 of Commission on Human Rights resolution 1997/59 on the situation of human rights in the Sudan, regarding the placement of human rights field officers to monitor the situation of human rights in the Sudan, in the locations, under the modalities and with the objectives suggested by the Special Rapporteur in his earlier reports.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. Situation of human rights in general in 1997

50. The Special Rapporteur has continued to receive reports and information on the violation of human rights in relation with which concern was expressed of Commission on Human Rights resolution 1997/59. The reports indicated that agents of the Government of the Sudan, including members of security forces, PDF and PPF, were responsible for a broad range of human rights violations in the areas controlled by them. In the capital city of Khartoum, according to reports and testimonies to the Special Rapporteur during his September 1997 mission by witnesses, victims or relatives of victims of violations, members of the security forces carried out a series of arrests without warrant, and ill-treated detainees. In many cases families not only did not have access to their detained relatives, who were, in many cases husbands and sons who were the only breadwinners in the family, but for months they had no information about their whereabouts. Members of PPF were reported to have carried out arbitrary round-ups of women and girls from the streets of Khartoum, keeping them for hours at their headquarters, or in tents serving as PPF bases in various neighbourhoods, abusing them verbally and even lashing them in some instances. Reports on individual cases of violations received during the Special Rapporteur's visit to Khartoum were communicated by him to the Consultative Council for Human Rights in September 1997.

51. Following the escalation of fighting between January and August 1997, the situation of human rights in the conflict zones has deteriorated. Reports on displacement of tens of thousands fleeing the war and on massive civilian casualties continued to reach the Special Rapporteur. In the areas affected by armed conflict, the available reports and information indicate that all parties are responsible for violations of human rights, including the right to life, liberty and personal security of civilians, especially women, children and the elderly.

52. Details of these cases and any replies received from the Consultative Council will be reflected in the Special Rapporteur's final report to the Commission on Human Rights at its fifty-fourth session.

53. In April 1997 the Consultative Council for Human Rights established several subcommittees dealing with human rights violations and abuses grouped as follows: detentions without trial, arrests, torture and lack of due process of law; religious persecution; forced displacement and bombardments; extrajudicial killings; access for relief organizations and humanitarian law; slavery and disappearances (a Special Committee, as described above, has been set in the framework of the Consultative Council and has been working since May 1996); the rights of women; the rights of the child; freedom of expression and peaceful assembly; and the report of the Juba Commission. The Special Rapporteur is of the opinion that this development should be considered by the international community as a positive step by the Government of the Sudan in addressing the situation of human rights in the country. The reports and information on violations and abuses on each of these categories received by the Special

Rapporteur in 1997 can now be considered with greater efficiency, especially if concrete steps are taken in a framework of consultation and cooperation.

2. Khartoum Agreement of 21 April 1997

54. The provisions of the 21 April 1997 Khartoum Agreement on fundamental human rights and freedoms are in accordance with international standards on human rights. The Special Rapporteur understands that constitutional decree No. 14/1997 did not reiterate these provisions, owing to reasons related to codification techniques and because they are considered as becoming an integral part of the new constitution. Although the two documents contain different wording on the same issues, all signatory parties with whom the Special Rapporteur met during his September 1997 mission to the Sudan, together with representatives of the Consultative Council for Human Rights and members of the National Assembly, expressed the opinion that those differences would not in any way prevent their implementation, should the political will of all the signatory parties remain firm in that regard. The implementation of the provisions of those documents, however, was considered by all concerned parties as the key question of the success of the peace process and an essential condition of a significant improvement of the situation of human rights in the Sudan in general. The Special Rapporteur is of the opinion that from a legal perspective the regulation of the institution of citizenship in accordance with the principles laid down in the April 1997 Khartoum Agreement and contained in constitutional decree No. 14/1997 is of crucial importance, inter alia, in giving effect to the provision of Commission on Human Rights resolution 1997/59, in which the Commission called upon the Government of the Sudan to comply with applicable international human rights instruments and to bring its national legislation into accordance with those instruments to which the Sudan was a party, and to ensure that all individuals in its territory and subject to its jurisdiction, including members of all religious and ethnic groups, enjoyed fully the rights recognized in those instruments.

3. Reports of the Special Committee on Allegations of Enforced or Involuntary Disappearances and Reported Cases of Slavery

55. There is no doubt that both reports reflect the findings of the Special Committee. It is confirmed by these reports at the same time that the allegations regarding disappearances in the Nuba Mountains area are not baseless. Although the Special Committee did its best to identify as many persons as possible from the initial list it was provided, the whereabouts of numerous individuals are not yet known. That points to the fact that local authorities, and especially the army commanders charged with both military operations and the supervision of PDF units under their command, bear the responsibility to protect civilians in the armed conflict zones. The Sudan is a signatory party to the Geneva Conventions of 1949, therefore the Government of the Sudan should take all the necessary measures in order to assure that its combat units observe the principles and provisions of international humanitarian law.

56. The Special Rapporteur takes note of the denials of reports on slavery and slavery-like practices in the Nuba Mountains area. It should be mentioned, however, that in the previous years most of the reported cases of slavery, the slave trade, servitude, enforced labour and similar institutions and practices were received from areas of southern Sudan and not the Nuba Mountains area. The majority of reports originated from the areas and the locations under government control (Al Dein and Gogrial, for instance), which the Special Committee has not yet visited, and where in the past eight years international human rights observers had continuously been refused access by the Government. The Special Committee states in its report that: "The autumn conditions and heavy rainfall, coupled with the fact that certain areas were under rebel control, prevented the Special Committee from gaining access to all areas (Al Dein, Nyamlell, Gogrial and Aweil). Its work was therefore confined to visiting the Nuba Mountains and the surrounding area."

57. In his 1996 interim report, the Special Rapporteur made several recommendations in relation to the activity of the Special Committee (A/51/490, paras. 17-22). For instance he recommended that the existence and the activities of the Special Committee should be publicized through the media, including radio and television broadcasts. The transparency of the work and the publicity of the findings should be ensured to the maximum extent.

58. He also stated that it was necessary to encourage all those who possessed information related to the pertinent issues to share them with the Special Committee. Also, all those who provided information or submitted complaints regarding issues of interest to the Special Committee were assured that they would not suffer reprisals, negative consequences or any other disadvantages.

59. The Special Rapporteur added that the Special Committee should consider the involvement, on a continuous basis, of representatives of local authorities and representatives of local communities, including local chiefs, in its activities. All the conditions for international participation in the form of technical cooperation and advisory assistance should also be guaranteed.

60. Unfortunately, since his September 1997 visit to Khartoum, the Special Rapporteur cannot report on the effective implementation of those recommendations. He was assured by the Chairman of the Special Committee that the publicity of its existence and operations would be enhanced, since during the past year only one single press announcement was made through a daily Khartoum newspaper. The texts of the relevant international documents are not available to the public at large. The Special Rapporteur suggested the publication of these texts in the printed media. International participation is still non-existent, and the Chairman of the Special Committee did not refer to contacts with tribal chiefs or other individuals in its activities, despite the fact that the Special Rapporteur is aware that there is a growing interest on behalf of the affected social groups in this regard. It should be mentioned also that reports of both enforced and involuntary disappearances and slavery and slavery-like practices continued to reach the Special Rapporteur in the past year. The communications received were made available to the Consultative Council for Human Rights for consideration. The Special Rapporteur will address this issue in more detail in his report to the Commission on Human Rights in 1998.

4. Juba report

61. The report of the Juba Commission was issued by the Consultative Council for Human Rights, an organ comprising representatives of several federal ministers, the security services and certain Sudanese non-governmental organizations, created in 1995 (see A/51/490, para. 6). This document is based on the findings of the Juba Commission, which was created in November 1992. The Juba report is a summary of the findings of the Juba Commission, which concluded its investigation and issued its report in May 1997, that is, the same month in which the document was finalized. The Advisory Council decided to make public only the results of the investigation because of the large volume of material and numerous details. The Special Rapporteur understands, however, that all of the material is available for those interested in learning more about the events as described in the Juba report.

62. The Special Rapporteur considers that the "difficulties" of the investigation described in the introduction to the Juba report do not explain adequately and convincingly why more than four years and seven months were needed to conclude the report (November 1992-May 1997). It was stated that the Commission had started its work in mid-January 1993 and presented its report in May 1997, with the explanation that the investigation had taken all that time because the events were the result of the comprehensive armed attack launched on the town of Juba, preventing the documentation of many facts and making the task of the Commission investigating hundreds of cases very difficult, as explained by the Commission in the report. It is difficult to understand why the Commission needed four years to finalize its report when the investigations and the trials lasted altogether a maximum of eight weeks (July-August 1992), including the time required to get permission from the Attorney General for special investigative procedures in the case of civilians, confirmations of sentences by the commander of the military zone and finally ratification by the Commander-in-Chief. It is also difficult to understand why in those years the relatives of those sentenced to death and executed were not so informed. While the investigation of cases of disappearances indeed may need more time, the cases resolved by the special courts could have been communicated through a prior or interim report issued well in advance, thus clarifying the situation and ending the uncertainty.

63. The Special Rapporteur unequivocally rejects the statement included in paragraph 33 of the Juba report (see para. 44 above), in which the Special Rapporteur and the Centre for Human Rights are obliquely held responsible for the delay in the investigation for not providing information to the Commission. The Special Rapporteur quotes the following paragraphs from one of his previous reports (A/48/601):

> "35. Reports on extrajudicial killings and summary executions were received by the Special Rapporteur from different independent sources. The most serious case reported was the arrest, disappearances and killing of hundreds of civilians and army officers following an SPLA attack on Juba in June and July 1992. Employees of foreign relief organizations were also victims of reprisals.

"36. In November 1992 the Government established a committee to investigate the Juba incidents. In June 1993, the committee reportedly announced that it would submit its report to the Government at the end of the month. In a meeting with the Chairman of the committee, the Special Rapporteur inquired about the results of the investigation. The Chairman replied that the committee had already studied many documents and had also paid a four-day visit to Juba in April 1993. The information gathered was, however, not sufficient for a thorough investigation, he said. The committee therefore considered it necessary to visit Juba a second time. But owing to a shortage of fuel for air transport, this visit had not yet taken place. The Special Rapporteur asked about the number of sentences pronounced by special military courts, which reportedly were set up and operated in Juba after June 1992. The Chairman of the committee was not able to provide any answer to this question, although according to information provided before by other authorities, in such cases, capital sentences pronounced by special courts were to be referred to Khartoum to be confirmed by the head of the State. The Special Rapporteur attached to the letter dated 12 September 1993 to the Ministry of Justice a list of 230 names of individuals who were allegedly arrested in Juba between June and August 1992. The whereabouts of the majority of them remain unknown and fears have been expressed that many of them have been extrajudicially or summarily executed. During the meeting with the Chairman, the Special Rapporteur emphasized the great concern of the international community regarding this specific case and the need for a complete and public clarification of the issue. Although the above-mentioned events took place before his appointment, the Special Rapporteur decided to mention this case because during his September mission and in the weeks thereafter reliable information was received indicating that the practice of extrajudicial killings, summary executions, arbitrary arrests and detention without trial continued during 1993 in Juba and surrounding villages under the control of the Government of the Sudan."

64. It is to be mentioned that according to its Chairman, between its creation in November 1992 and December 1993, the Commission visited Juba only once for four days. In a meeting with the Special Rapporteur, the Chairman complained at the same time about the lack of necessary funds and he confirmed that the findings of the investigation would not be released, unless the President of the Revolution Command Council for National Salvation decided otherwise.

65. The Special Rapporteur will address some details of the Juba report in his 1998 report to the Commission on Human Rights, however he feels it necessary to note here that the report does not address the question of the treatment of the detainees during detention and investigation, despite continuous public reports and information on torture, degrading and inhuman treatment, including testimonies received by the Special Rapporteur from victims of these practices, who were subsequently not sentenced, nor does it address in a convincing manner allegations of extrajudicial killings and summary executions. Also, the Special Rapporteur believes that further details on the creation, regulations and functioning of the special courts in 1992 in Juba should have been addressed by the Juba report (see E/CN.4/1997/58, paras. 30 and 31).

66. As mentioned above, some positive developments can be reported regarding the situation of street children. The camp for children in Abu Dhom was finally closed in 1997 and a new practice in dealing with street children is emerging, centred on rehabilitation and family reunification. It is especially encouraging that UNICEF is becoming more and more involved in common projects and field work with specialized departments of the Ministry of Social Planning, together with national and international non-governmental organizations. The Special Rapporteur believes that the international community should welcome these developments and support further steps aimed at improving the situation, for instance in supporting the centre for traumatized children in Juba, inaugurated in 1996.

67. The situation of women continues to raise questions, especially with regard to the legislation in force on the status of women and its implementation by local authorities. Most of the reports and information, including testimonies received by the Special Rapporteur during his September 1997 mission to Khartoum, indicated that members of PDF were responsible for the violations and abuses, especially the arbitrary round-up of women from the streets of Khartoum, the verbal harassment inflicted upon them and the lashings carried out at PPF bases. It is therefore the task of the federal Government to take up these cases and address the issue in its larger social and legislative context. It should be mentioned that in August 1997, 200 women were released from the women's section of Omdurman prison and that the number of inmates as of 4 September was estimated at 300.

68. In view of the fact that the Special Rapporteur received assurances from the Consultative Council for Human Rights that he would receive replies on a series of questions related to violations reported after the renewal of his mandate in April 1997, including arbitrary arrests and detentions without due process, allegations of torture and maltreatment in detention, questions regarding the freedom of religion and other instances, the Special Rapporteur will address these issues in his report to the Commission on Human Rights in 1998.

69. Finally, the cooperation between the Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights on one hand, and the Government of the Sudan and its specialized organs and agencies on the other should be strengthened and extended in the future in the field of investigating and reporting, with special emphasis on verification of reports on technical assistance and advisory services. In the next section the Special Rapporteur makes two recommendations in this regard.

B. Recommendations

1. Situation of human rights in general

70. The Special Rapporteur, after discussions with representatives of the Consultative Council for Human Rights and other competent government authorities, followed by a careful examination of all the reports available and the documentation provided by government representatives, considers that the recommendations and requests addressed to the Government of the Sudan contained

in Commission on Human Rights resolution 1997/59 (see para. 3 above) remain valid and should be reiterated.

71. While recognizing the efforts made by various government organs, especially the efforts of the Consultative Council for Human Rights to improve the communication between the Government of the Sudan and the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur emphasizes that more efforts must be made in order to begin the implementation of practical measures aimed at ending violations and abuses of human rights in the Sudan. The Special Rapporteur recommends that the international community should support such measures, and recommends that the Government of the Sudan create the appropriate conditions for the involvement of different United Nations agencies and organs, national and international human rights and humanitarian organizations in these activities.

72. The Special Rapporteur wishes to reiterate also his recommendations made in the 1997 report to the Commission on Human Rights (E/CN.4/1997/58, para. 59), except those covered by Commission on Human Rights resolution 1997/59.

2. Specific recommendations

73. In relation with the Special Committee on Allegations of Enforced or Involuntary Disappearances and Reported Cases of Slavery, the Special Rapporteur reiterates the specific recommendations to the Government of the Sudan contained in his previous report to the General Assembly (A/51/490, para. 51), which he considers still relevant:

(a) To ensure wide publicity of the activities and findings of the Special Committee, including the use of public radio and television broadcasts;

(b) To ensure full transparency by encouraging representatives of all interested civic groups to participate and to help the fact-finding activities of the Special Committee;

(c) To give free and unimpeded access to international human rights and humanitarian organizations and independent observers to all areas where enforced or involuntary disappearances or cases of slavery, slave trade and similar institutions and practices, especially the sale of and trafficking in children and women have been reported;

(d) To consider the possibility of international participation in the process of addressing reported cases of enforced or involuntary disappearances in the Nuba Mountains area, and in contacting representatives of parties to the armed conflict other than the Government of the Sudan in areas under their control.

74. The Special Rapporteur recommends the establishment of periodical direct contacts in Khartoum between representatives of the Office of the High Commissioner and the Government of the Sudan in order to ensure a prompt exchange and verification of information or reports regarding the situation of human rights in the Sudan.

75. Finally, regarding the conflict zones, the Special Rapporteur reiterates the request for the implementation without delay of the recommendation contained in paragraph 25 of Commission on Human Rights resolution 1997/59 regarding the placement of human rights field officers to monitor the situation of human rights in the Sudan, in the locations, under the modalities and with the objectives suggested by the Special Rapporteur in his earlier reports.

Notes

[a] Official Records of the Economic and Social Council, 1997, Supplement No. 3 (E/1997/23), chap. II, sect. A.

[b] A/CONF.177/20, chap. I.

[c] The Special Rapporteur was provided with the official English translations of both documents by the Consultative Council for Human Rights during his September 1997 mission to the Sudan.